

Applicants : Thomas Gebele, Jürgen Henrich, Stefan Bangert, Jürgen Honekamp,
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REMARKS

The remarks presented herein are believed to be fully responsive to the recent Office Action. Accordingly, reconsideration is requested. Claims 1-33 were pending in the application. Claims 7-10, 18, 19, 24 and 28-33 were withdrawn from consideration pursuant to the recent election/restriction requirement. Applicants repeat the traversal of the restriction requirement. Claims 1-6, 11-17, 20-23, and 25-27 remain in the application, and all are at issue.

Drawings.

The proposed drawing corrections filed on December 11, 2002, have been approved by the Examiner. Enclosed herewith are corrected drawings.

Further drawing objections were made for failure to comply with 37 C.F.R. 1.84(p)(5) because the drawing Fig. 5 omits reference to items "1c" and "25c". Enclosed herewith is a proposed amendment to Fig. 5 with the proposed drawing correction included. Acceptance is requested.

Claim Rejections – 35 U.S.C. § 112.

Claims 2-6, 11, 12, 15 and 16 were rejected under 35 U.S.C. § 112, second paragraph, as being incomplete for omitting allegedly essential structural cooperative relationship of elements, such as a gap between the necessary structural components, a baffle arrangement, and the like. The rejection is traversed.

The undersigned respectfully points out that at least claims 1 and 2 of the original patent did not make reference to either a "gap" or a "baffle arrangement." Accordingly, it is fundamental that Applicants are entitled to claim their invention as long as it is reasonably understood by the skilled artisan and that Applicants do not consider a "gap" or a "baffle" to be an essential part of the invention as defined in claims 1 and 2 as originally filed.

Additionally, nowhere in the specification is it recited or taught that these features are critical. Features, which are merely preferred, are not to be considered critical. *In re Goffe*, 542 F.2d 564, 191 U.S.P.Q. 429 (CCPA 1976). Applicants have described in the specification a preferred embodiment of the invention. If the scope of the subject matter

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embraced by the claims is clear, and Applicants have not, otherwise, indicated that the invention is to be of a different scope from that defined in the claims, the claims comply with 35 U.S.C. § 112, second paragraph. Applicants are not limited to claiming the preferred embodiments. Instead, Applicants are entitled to claim their invention as broad as the prior art disclosure will allow. *In re Rasmussen*, 650 F.2d 1212, 211 U.S.P.Q. 323, 326 (CCPA 1981). Furthermore, a claim may be broader than the specific embodiment disclosed in the specification. *In re Gardner*, 480 F.2d 879, 178 U.S.P.Q. 149 (CCPA 1973). For example, in *Ex parte Hendrickson*, 42 U.S.P.Q. 634 (Pat. Off. Bd. App. 1939), the invention related to a connecting structure at the ends of railway cars and for surrounding the passageway between the railway cars to protect people from going from one car to another. The claim was rejected as being indefinite. The Board found that the Examiner's holding of indefiniteness was really a rejection relating to the scope of the claim that used the phrase "guides associated with the sides of the diaphragm." The Board found the term not to be indefinite, but merely broad.

The Office Action makes reference to M.P.E.P. § 2172.01 which states that essential matter includes elements "described by the Applicant's as necessary to practice the invention." There is no location pointed out by the Examiner in the specification where the use of a "gap" or a "baffle" is stated to be an essential item or necessary to practice the invention. To the contrary, as previously set forth, Applicants consider the invention to be that which was recited in original claims 1 and 2 without the inclusion of a "baffle" or a "gap." It is clear that Applicants do not need to set forth in the claims every structural element of the preferred embodiment. Otherwise, the inclusion of a claim in the application would be meaningless because each and every element set forth in the preferred embodiment would need to be put forth in the claims rendering the claims useless. The rejection is improper and should be withdrawn. Withdrawal is requested.

Claim Rejection - 35 U.S.C. § 102.

Claims 1, 13, 14 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Patent Publication No. 11-100661 A (Akamatsu et al.). The rejection is traversed.

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In the Office Action, the Examiner makes reference to a "cathode part 2 (baffle arrangement)." It is submitted that the reference number 2 in the schematic drawings of Figs. 2 and 3 of Akamatsu et al. does not denote a baffle arrangement as used by one preferred embodiment of the present invention. Instead, reference number 2 of Figs. 2 and 3 of Akamatsu et al. designates merely the cathode section without clearly specifying the concise form of this element. Because Figs. 2 and 3 only comprise schematic drawings, there is no basis to interpret the cathode section as actually comprising a baffle arrangement, as shown in Figs. 2 and 3 by reference numeral 2. Therefore, it is submitted to be a hindsight view of the disclosure of Akamatsu et al., with knowledge of the present invention, when the Examiner makes the statement that Akamatsu et al. also discloses the baffle arrangement. One skilled in the art reading Akamatsu et al. without the knowledge of the present invention would not be informed that reference numeral 2 might designate a baffle arrangement as set forth in claims 1, 13, 14 and 17. Accordingly, Akamatsu et al. does not disclose arrangement of the cathode material surface into an evaporation-active part and an evaporation-inactive part.

Furthermore, gas inlet pipe 13, shown in the figures Of Akamatsu et al., cannot be used to prevent a deposition of the first material component of the anode on the cathode material surface. According to the abstract of the reference, an atmospheric gas is introduced by the gas introducing tubes 13 and 14. Because no inert gas or protective gas is used, it is clear that the gas introducing tubes 13 and 14 cannot be used for preventing deposits on the cathode material surface. In addition, there is no suggestion for the reader of Akamatsu et al. to amend the gas-introducing tubes 13 and 14 in order to use them for preventing deposits on the cathode material surface. Accordingly, Akamatsu et al. does not provide an enabling disclosure of an evaporation-active and evaporation-inactive cathode material surface.

Moreover, claim 1 requires a gas supply for supplying protective gas to the evaporation-active part of the cathode material surface. Because the outlet end of the gas-introducing tube 13 of Akamatsu et al. is placed at a distance in front of the cathode, it is not possible to supply a protective gas onto the evaporation-active part of the cathode material surface as required in claim 1.

Moreover, Akamatsu et al. is completely silent about the feature that the protective gas is introduced into an intermediate space between the baffle arrangement and the cathode

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material surface which is also important for preventing contamination of the cathode material surface by anode material. Because the gas-introducing tube 13 is disposed in the middle of a cathode material 5, while the alleged baffle arrangement 2 is only disposed on the top and bottom as well as the backside of the cathode section, this feature can either be derived from the drawing nor is it disclosed in the description.

In conclusion, the invention as defined in claims 1, 13, 14 and 17 of the present application is not disclosed in an enabling fashion by JP 11-100661 without referring to the present application which is not prior art. While Akamatsu et al. may disclose an apparatus for more efficiently activating atmospheric gas in a plasma chamber, the present application claims an electrode arrangement for the plasma-aided coating of a substrate having a cathode material surface being protected against the contamination by deposits of anode material. For this purpose, a baffle arrangement defining an evaporation-active part and an evaporation-inactive part of the cathode material surface and further a gas supply for supplying protective gas onto the evaporation-active part of the cathode material surface are provided in the invention as defined in the rejected claims. Moreover, the device is designed so as to introduce the protective gas into an intermediate space between the baffle arrangement and the cathode material surface.

Claim Rejection – 35 U.S.C. § 103.

Claims 25-27 were rejected under 35 U.S.C. § 103 as being unpatentable over Akamatsu et al. in view of WO 00/46418 (Klaus et al.) The Office Action does not allege that Klaus et al. makes up for the deficiencies of Akamatsu et al. as set forth above with respect to claim 1. Indeed, it is submitted that Klaus et al. does not make up for the deficiencies set forth above with respect to claim 1. Accordingly, even if the references were combined in the manner suggested in the Office Action, which is not accepted as being motivated in the art, the subject matter of claims 25-27 that are dependent on claim 1 are clearly not met. Accordingly, the rejection is improper and should be withdrawn. Withdrawal is requested.

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Allowable Subject Matter.

The undersigned gratefully acknowledges the indication that claims 3-6, 11, 12, 15, 16 and 20-23 would be allowable if rewritten to overcome the rejections under 35 U.S.C. § 112. However, in view of the arguments set forth above, Applicants decline the invitation to rewrite the claims.

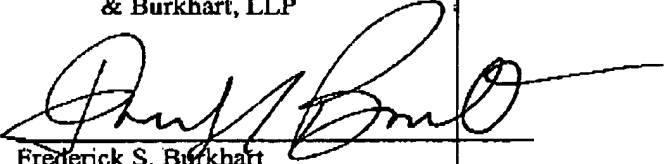
It is submitted that the application is presently in a condition for allowance. A notice to that effect is earnestly solicited.

Respectfully submitted,

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